

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Aurora Maoz	Team: Team # 4	CCRB Case #: 200713590	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/19/2007 12:12 AM	Location of Incident: Clarendon Avenue between 31st and 32nd Streets and at the 67th Precinct Stationhouse	Precinct: 67	18 Mo. SOL 3/19/2009	EO SOL 3/19/2009	
Date/Time CV Reported Wed, 09/19/2007 12:31 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/19/2007 12:31 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Michael Kraft	01453	924040	067 PCT
2. POM Pedro Bobe	23291	927936	PBBS AC
3. POM John Cascone	29185	925037	PBBS AC
4. POM Vaughan Ettienne	29839	928258	PBBS AC

Officer(s)	Allegation	Investigator Recommendation
A.POM Vaughan Ettienne	Abuse: PO Vaughan Ettienne stopped § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
B.POM Pedro Bobe	Abuse: PO Pedro Bobe stopped § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
C.POM John Cascone	Abuse: PO John Cascone stopped § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
D.POM Vaughan Ettienne	Abuse: PO Vaughan Ettienne frisked § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
E.POM Vaughan Ettienne	Abuse: PO Vaughan Ettienne searched § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
F.POM Vaughan Ettienne	Force: PO Vaughan Ettienne used force against § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
G.POM Vaughan Ettienne	Abuse: PO Vaughan Ettienne threatened § 87(2)(b) with the use of force at Clarendon Avenue between 31st and 32nd Streets.	
H.POM Vaughan Ettienne	Discourtesy: PO Vaughan Ettienne spoke rudely to § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
I.POM Vaughan Ettienne	Off. Language: PO Vaughan Ettienne made remarks based upon the perceived sexual orientation and gender of § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.	
J.SGT Michael Kraft	Abuse: Sgt. Michael Kraft did not process § 87(2)(b)'s complaint regarding officers at the 67th Precinct Stationhouse.	

## Synopsis

On September 19, 2007, § 87(2)(b) called both IAB and the CCRB to file a complaint against three officers from Patrol Borough Brooklyn South Anti Crime; these officers are PO Vaughan Ettienne, PO Pedro Bobe and PO John Cascone. He also made a complaint against Sgt. Michael Kraft of the 67<sup>th</sup> Precinct.

The investigation determined that § 87(2)(b) was walking west on Clarendon Avenue between East 31<sup>st</sup> Street and 32<sup>nd</sup> Street in Brooklyn around midnight on September 19, 2007, as PO Ettienne, PO Bobe, and PO Cascone were driving westbound in an unmarked Chevy Impala. The officers all saw § 87(2)(b) walking § 87(2)(g). All officers agreed that they suspected that he was armed. PO Ettienne suspected that § 87(2)(b) had a gun because there appeared to be “weight” in his pocket, and he observed an object protruding from said pocket which was later determined to be a hairbrush. The officers drove alongside § 87(2)(b) and told him to “stop” numerous times. When § 87(2)(b) did not stop, the officers exited their vehicle and approached him (**Allegations A through C**). At that time, the officers demanded identification. § 87(2)(b) questioned the officers angrily as to why they stopped him and demanded his identification. After a conversation in which the officers demanded § 87(2)(b)'s identification numerous times, PO Ettienne pushed § 87(2)(b) up against a gate, held him there, and PO Ettienne frisked the pocket where he saw the handle of an unidentified object (**Allegation D**). PO Ettienne pulled out the object, which turned out to be a wooden handled brush (**Allegation E**), dropped the brush onto the ground, and then proceeded to frisk the rest of § 87(2)(b)'s pockets and his waistline (**Allegation D continued**). § 87(2)(b) alleged that PO Ettienne searched into all of his pockets and removed numerous objects that they dropped on the ground (**Allegation E continued**). § 87(2)(g)

After the officers determined that § 87(2)(b) was not carrying a weapon, PO Ettienne and PO Bobe continued to demand his identification until it was produced, and PO Bobe took § 87(2)(b)'s identification to the vehicle to run him for warrants § 87(2)(g). § 87(2)(b)'s information was written down, PO Ettienne filed a UF-250 for the stop, and his identification was returned to him.

§ 87(2)(b) made further allegations that PO Ettienne approached him, stepped on his foot (**Allegation F**), threatened him verbally with force using profanity (**Allegations G and H**), used offensive language towards him (**Allegation I**), and then slapped him on the back of his head (**Allegation F continued**). § 87(2)(g)

Immediately after these interactions, § 87(2)(b) claimed that he went to the 67<sup>th</sup> Precinct to file a civilian complaint, and Sgt. Michael Kraft allegedly made him wait for two hours before informing him as to how he could file his complaint (**Allegation J**).

§ 87(2)(g)

§ 87(2)(g)

## Summary of Complaint

The complainant § 87(2)(b) is a § 87(2)(b)-old, black male, approximately 165 lbs, who at the time of the incident § 87(2)(b). He provided three statements, in the form of an IAB complaint

*made at 12:31 AM on September 19, 2007 (Encl. 4), a CCRB complaint made at 1:08 AM on September 19, 2007 (Encl. 3), and an in-person statement provided on October 22, 2007 (Encl. 7).* § 87(2)(g)

On September 18, 2007, around 11:45 PM, § 87(2)(b) left his girlfriend's apartment, and was walking home. § 87(2)(b) took a left onto Clarendon Avenue, and then crossed over to the other side of the street. He had a black sweatshirt on at the time and the hood was pulled up over his head, but it was not zipped. He was wearing his navy blue security uniform with grey slacks with the emblem that was visible underneath because his sweatshirt was not zipped up and he his hands were in the pockets of his sweatshirt. As he was walking along Clarendon Avenue between 31<sup>st</sup> Street and Nostrand Avenue, he noticed a black Chevy Impala drive by him on the same side of the street he was walking on. It then made two U-Turns, came behind him again, and slowed down. Someone sitting inside the car who he could not identify because the person was behind him, shouted, "Hey you." § 87(2)(b) did not respond and kept walking. He did not try to flee. The car continued to follow him, and someone again called out, "Hey yo, stop." They asked him to stop two or three times. At that point, the Impala drove closer to § 87(2)(b) and one of the officers told him to stop again. § 87(2)(b) looked at the officers at this point and described them in detail. He stated that there was an extremely muscular black male officer, identified by the investigation as PO Vaughan Ettienne, an Hispanic male officer, identified by the investigation as PO Pedro Bobe, and a white male officer, identified by the investigation as PO John Cascone.

The officer sitting in the passenger seat, identified by the investigation as PO Bobe, pulled out his badge and told § 87(2)(b) to stop. As soon as he saw the badge, § 87(2)(b) stopped immediately. The officers got out of the vehicle and PO Bobe and PO Cascone approached § 87(2)(b) first. § 87(2)(b) was standing a couple of feet from a gate leading towards the driveway of a private red house when he was initially approached by the officers. § 87(2)(b) asked the officers what had happened. PO Bobe spoke to him, and § 87(2)(b) thought that PO Bobe first asked him why he had not stopped, although he was not certain about the line of questioning. § 87(2)(b) told them his name was not "yo," and he did not know who they were. The officer then said to § 87(2)(b) "Let me see your ID." The officer did not ask him any other questions before requesting his identification. § 87(2)(b) refused to provide his identification, and asked why they needed to see his identification. The officers asked him why he would not cooperate with them, and why he failed to stop. § 87(2)(b) told the officers it was because he did not go by "Yo."

After a few attempts to get § 87(2)(b) to turn over his identification, PO Ettienne became involved. PO Ettienne told § 87(2)(b) that PO Bobe did not need to have a reason to ask for his identification. § 87(2)(b) responded that he wasn't talking to that officer, he was talking to his partner, and PO Ettienne "got in his face." § 87(2)(b) continued to refuse to give the officers his identification, and again asked why the officers needed it. He also asked them if he fit a description, and if so, what that was. In his in-person interview, § 87(2)(b) stated "leave me alone," although it was unclear whether he said this at the time of the incident.

Throughout this interaction, PO Cascone searched on the ground with his flashlight, and had walked back down the block in the direction that § 87(2)(b) had come from. The officers spoke with § 87(2)(b) for about one minute before they became physically involved in taking his identification. Neither § 87(2)(b) nor PO Bobe raised their voices when they were first speaking. PO Ettienne raised his voice when speaking to § 87(2)(b) however, § 87(2)(b) never raised his voice in response any louder than a normal speaking tone. The officers never gave him any indication as to why they had stopped him.

PO Ettienne then grabbed § 87(2)(b)'s arm, turned him around, and grabbed him by his right leg and his back to push him against the gate. His chest and his left leg hit the gate. He was held there while an unknown number of officers searched into his pockets. He could not tell which officers specifically were going into his pockets, but knew PO Ettienne and PO Bobe were mainly interacting with him. No officers asked him what he had in his pockets before they began searching him. He did not know if they felt his pockets before going inside them. § 87(2)(b) had his wallet, one piece of his identification, a small amount of cash, some paper, and his keys. Although § 87(2)(b) did not state that he had a brush in his pocket in his in-person interview, in follow-up questioning on January 4, 2008, he stated that he probably was carrying a light colored wooden brush at the time (Encl. 7 for photographs). The items were in his front and back pockets, he did not know exactly what was where, and thought his wallet was in his back pocket. He was held over the gate for about one minute.

The officers took out his wallet and looked through it for identification. At that point, he was released from the gate. The officers again told him, "Give us your identification" and he took out his security ID. They then said they wanted his driver's license. § 87(2)(b) saw PO Bobe take his identification back to the car and saw him looking at a screen. He thought some of his belongings had fallen out of his pockets during the time when he was pushed against the gate because he saw some of his money on the ground. He asked the officers if they could pick it up, and they told him it was his "shit" and refused to do so.

The officers handed back his things, and then let him go. After they returned to their car, PO Ettienne told § 87(2)(b) that he should "go to the gym" because he had a "woman's physique," and called him a "fucking faggot" repeatedly and told him "go change his tampon." At that time, § 87(2)(b) was walking away, and he told PO Ettienne that he should go to the gym to blow off some steam, and not to do it (meaning blow off steam) in the street. PO Ettienne then walked up to § 87(2)(b) and approached him from the front as he was walking away. PO Ettienne stepped on § 87(2)(b)'s foot. He then stated, "I'm going to fuck you up, you ain't nobody, you think because I'm wearing this badge I'm a pussy." § 87(2)(b) put his hands up to show that he was not doing anything, and PO Ettienne responded by saying, "That's what I thought you pussy." § 87(2)(b) did not verbally respond. PO Ettienne slapped § 87(2)(b) on the back of his head with an open palm and told him to go home. They both walked off, and PO Ettienne again told him he was a "pussy." The other officers were by the vehicle at that point, although § 87(2)(b) did not know if they were inside the vehicle or standing near it. After the officers were in the car, § 87(2)(b) was standing in the street in front of the car and tried to take a picture with his phone. The car sped off, as if it was trying to hit him. When asked to repeat the different words the officer used towards § 87(2)(b) that he was complaining about, he stated that he knew he called him a "faggot," and a "pussy," that he had a "woman's physique," to "go change his tampons," and that he "had his period." At first he stated that he did not respond to these verbal assaults in any way, and then said that he did remember he said to the officer, "I bet I could get your girl" after he told him he had a "woman's physique."

§ 87(2)(b) went to the 67<sup>th</sup> Precinct and spoke with an officer in a blue uniform who was sitting behind the desk; this officer was Sgt. Michael Kraft who was identified by the 67<sup>th</sup> Precinct roll call as the desk officer at the time. § 87(2)(b) also stated that Sgt. Kraft told him that he was the officer in charge. § 87(2)(b) told Sgt. Kraft that he wanted to make a complaint against one of his detectives who had just assaulted him. Sgt. Kraft told § 87(2)(b) that he would have to wait for the detective who assaulted him to come back to the precinct in order to file the complaint. § 87(2)(b) asked to speak to someone else who was in charge, and Sgt. Kraft informed him that he was in charge. § 87(2)(b) waited for somewhere between one and two hours. § 87(2)(b) then called 911, and walked to the front desk so that he could hear what was going on. The desk officer then gave him the number for the CCRB. § 87(2)(b) provided the license plate of the vehicle in his initial complaint.

§ 87(2)(b) thought that this incident triggered his chronic migraines as a result of being hit in the head. When asked how often he gets migraines, he stated that his head has to be shaken or something of the sort.

In his initial complaint to the CCRB, § 87(2)(b) alleged that he asked PO Ettienne for his name and shield number. He did not state this in his IAB complaint, nor did he reiterate this allegation in his in-person complaint. In his initial IAB complaint made a half hour after the incident, § 87(2)(b) also provided the license plate for the vehicle that corresponded correctly to the car that the subject officers from Patrol Borough Brooklyn South Anti-Crime were driving.

### **Results of Investigation**

#### ***Officer Statements***

##### **PO Vaughan Ettienne**

PO Ettienne filed a **UF-250** relating to this incident § 87(2)(g) (Encl. 8A-B). § 87(2)(g) On January 17, 2008, **PO Ettienne** was interviewed at the CCRB (Encl. 9). PO Ettienne is a black male officer, approximately 5'8" tall and 225 lbs, who was bald with brown eyes. At the time of his in-person interview, he was assigned to the Quarter Master section, however, at the time of the incident, he was assigned to Patrol Borough Brooklyn South Anti-Crime. PO Ettienne did not have his memo book on the day of his in-

*person interview because he no longer had access to his locker since he was reassigned to the Quarter Master Section. .*

From September 18, 2007, to September 19, 2007, PO Ettienne worked from 4:25 PM until 2:05 AM the next day. He was in plainclothes, had his shield around his neck, and was working with PO Bobe and PO Cascone in a dark Chevy Impala. He was the passenger, and was on a patrol within the confines of the 67<sup>th</sup> Precinct. He thought PO Bobe was driving the vehicle.

He and his partners were driving westbound on Clarendon Avenue coming from E. 23<sup>rd</sup> Street towards Nostrand Avenue. He himself made an observation of an individual, identified as § 87(2)(b) walking westbound on the south side of the street, on the sidewalk opposite the police vehicle. At one point, when § 87(2)(b) was in front of the vehicle about sixty feet away, PO Ettienne noticed the imprint of something in his back pocket and a black handle sticking out about two inches. He then told his partner to roll the window down to get a closer look, and he still could not see what the object was. He told the other officers that he observed something in his back pocket. He stated that the individual did not catch the other officers' attention the way that it caught his because they were talking at that time. When asked if they observed the object after he did, he said that he alone observed it, and they were backing him up.

From that position, PO Ettienne noticed that § 87(2)(b)'s right back pocket was heavy and there was an unidentified object in his back pocket that made his pants sag. There was a black handle sticking out from his right back pocket, and it was sticking out about two inches. It stuck out because it was a black handle against blue jeans. He could not identify in any way what the outline resembled, and he did not know what it was. He suspected that it might be a gun because his pocket was heavy. He stated that the weight of it alone made him suspicious. He stated, "It could have been anything and that's not really what evoked my suspicion. His unwillingness to stop was what made him suspicious." He had stated that when he got closer, he still could not make out an imprint. The "weight" of his pocket, however, reminded him of the way that a gun might weigh down a pocket.

§ 87(2)(b) then noticed their vehicle, looked at them, and then crossed to the north side of the street, which was the same side that the officers were on. As they were going through an intersection, § 87(2)(b) crossed behind the police car, and as he was about to walk past them, they stopped the vehicle. PO Ettienne watched him cross through the windows of the vehicle. As he walked behind and passed them, § 87(2)(b) saw him pull his sweatshirt down, which made PO Ettienne suspicious that he was trying to cover his pants, although he later stated that he could not successfully cover his pants because his pants were sagging too low. He then started to "hug" the wall as he walked.

§ 87(2)(b) caught up with the police vehicle, and PO Ettienne identified himself as a police officer. § 87(2)(b) ignored him and kept walking. At that point, they began to drive alongside him. PO Ettienne turned on the strobe lights in the car, and whooped the horn because he knew that sometimes people do not realize that they are police in unmarked vehicles. PO Ettienne showed him his shield, and said "Police, stop." § 87(2)(b) failed to stop and kept walking. Since they were now on the same side of the street, PO Ettienne could get a "closer look" and noticed that his pants were still sagging.

Regarding whether or not he could observe the object further at that time, he gave conflicting statements. He first stated that all he could make out was the handle of the object (two inches long and black). When asked about his previous statement regarding pulling the sweatshirt down being suspicious, he stated that because his pants were so baggy, pulling his sweatshirt down could not actually cover the object. He stated that the object was out of his view at after he crossed the street because it was on the right side of his body. He stated that at no point before getting out of the car, did he get any more visual information which would have indicated what the object was.

PO Ettienne felt he had "reasonable suspicion" to stop § 87(2)(b) so he got out of the car and asked § 87(2)(b) to stop. He said that although he was the one who first observed him, the officers made a mutual decision to stop him after he failed to stop. He stopped him by impeding his path so that he was standing about two feet in front of him. PO Ettienne was the first officer to interact with him, and he did most of the talking. It was not necessary to physically put his hands out to get him to stop.

PO Ettienne asked § 87(2)(b) if he had identification on him, and he told him he did not have to show him anything. He asked him what he had in his back pocket. § 87(2)(b) told the officers that they had no reason to stop him, and he felt he was being harassed. PO Ettienne attempted to explain why he was being stopped, and § 87(2)(b) refused to listen to the officer and kept expressing his feelings of being harassed. They got in a "back and forth" about § 87(2)(b)'s identification, and PO Ettienne told § 87(2)(b) that he was required to produce identification when asked for it by a police officer. PO Ettienne stated that he was required to produce identification at that point because he refused to stop. PO Ettienne

explained that these factors in conjunction with the object in his pocket, and the fact that he crossed the street, raised the interaction from a common law right of inquiry to reasonable suspicion, which meant he needed to get § 87(2)(b)'s identification. He stated that he also needed his identification for a "Stop, Question, and Frisk Report" also known as a UF-250. He then asked him again what the object was in his back pocket and he told him "it was none of his business." PO Ettienne further stated that he could have refused identification if he did not have reasonable suspicion to stop him, however, he was required to provide it at that point because one has to identify themselves to a law enforcement officer when stopped.

As he was speaking to him, PO Ettienne tried to get a better view of the pocket, but § 87(2)(b) was turned to the side so he could not really see the object. He then said, "I'm just going to frisk your back pocket real quick, there's something back there, let me check it out."

PO Ettienne then went to lift his sweater up and tried reach around the back of him. § 87(2)(b) brushed his right forearm away. At that point, PO Ettienne pushed § 87(2)(b) against a chain link fence because he would not allow the officer to frisk him. PO Ettienne did not tell him to turn around before frisking him because § 87(2)(b) was not being compliant at that point. § 87(2)(b) was less than a foot from the fence at that time.

PO Ettienne placed one arm on § 87(2)(b)'s shoulder blade, turned him around, and pushed him about a foot so he was against the fence. The fence was about three and a half feet high, and their momentum together almost carried them over the fence. PO Ettienne had to pull § 87(2)(b) back by his waistband, and PO Ettienne held him by the small of his back against the fence. PO Ettienne then lifted up his sweater, felt the pocket, and he felt a hard object and he could not tell what it was. He felt a hard rectangular shape, about 4 inches long. He stated that it was police procedure to pull the object out to see what it was because it was hard. It turned out to be a black wooden brush. He then dropped the brush onto the ground so that he could frisk the rest of § 87(2)(b) including his pockets and his waistline for his safety, mentioning as reasoning for this his unwillingness to stop and combative, somewhat violent nature, and to see if there was "anything there that warranted his attention." PO Ettienne stated that there was not anything else that warranted his attention. PO Ettienne stated that there was nothing further to raise his suspicion after he found the brush in his pocket. The UF-250 indicated that § 87(2)(b) had a brush and a comb in his back pocket, however, PO Ettienne did not make mention of any other objects during his in-person interview.

After that, they again asked § 87(2)(b) for his identification, and he responded, "I don't have to show you anything." PO Ettienne then continued to ask him to produce identification until he produced it. PO Ettienne asked him about seven times before the frisk, and another three times afterwards. He finally handed his identification to PO Bobe, who he believed ran him for warrants as part of stop procedure. He knew it was either PO Bobe or PO Cascone who ran him for warrants, but he never saw PO Cascone in possession of § 87(2)(b)'s identification.

PO Bobe then gave PO Ettienne § 87(2)(b)'s identification so he could write down his information for the "Stop, Question, and Frisk report." While PO Ettienne was writing down his pedigree information, § 87(2)(b) went on a tirade, telling PO Ettienne he was a "faggot" and a "pussy." He told the officers, "I could fuck you up," "I could fuck any of one of your girlfriends" to which PO Ettienne responded, "Maybe you would know," as he was walking away, although he also stated there was no back and forth between any of them at that point regarding these comments. PO Ettienne then told him to "have a good night and keep walking." PO Ettienne did not approach § 87(2)(b) at that point. No officer ever stepped on his foot, or had their hands anywhere near his head. No other officers had physical contact with § 87(2)(b). PO Ettienne then handed back his identification. No officers responded to him with profanity or offensive language, or in any way to the manner in which he spoke to them. The officers were laughing, and repeating what he said to each other, including, "Oh you're a faggot now," although that only took place in the vehicle.

As the situation concluded, PO Ettienne walked back toward him, and tried to hand him back his hairbrush. § 87(2)(b) did not want it, so he allowed it to fall on the ground. § 87(2)(b) eventually picked it up and started walking away, and he was still cursing and screaming at them. § 87(2)(b) was not within less than three feet of the car when they pulled off.

#### **PO Pedro Bobe**

*On January 4, 2008, PO Pedro Bobe was interviewed at the CCRB in connection with this case (Encl. 10). PO Bobe is a 5'7" tall, 175 lb., Hispanic male with brown eyes. He is § 87(2)(b)-old and had been on the force for about six years at the time of his in-person interview.*

From September 18, 2007, to September 19, 2007, PO Bobe worked from 5:30 PM until 2:05 AM the next morning. He was dressed in plainclothes, and was assigned to an unmarked vehicle (unknown type) with PO Cascone, and PO Ettienne. He was assigned to anti-crime patrol. PO Bobe's memo book had been destroyed, and he did not remember if he had any entries pertaining to the incident.

PO Bobe could not remember where he was in the vehicle, although he might have been driving. When they were stopped at the intersection of Clarendon Avenue and 31<sup>st</sup> Street, the officers saw an individual (identified as § 87(2)(b)) pass about eight feet in front of their vehicle. He did not know who first noticed § 87(2)(b). From that point, PO Bobe and the other officers saw that the individual had a metal clip about three inches long sticking out of one of his pants' pockets. PO Bobe did not see the individual motion towards it, and the clip was the only thing that was suspicious about the individual. The area was well lit by street lights. He crossed in front of the car for about fifteen seconds. PO Bobe was not sure whose decision it was to stop the individual initially.

PO Bobe did not know who first approached § 87(2)(b) but the officers immediately identified themselves by showing their shields and told him to stop as they exited. § 87(2)(b) began to get upset with the officers and refused to stop. He was stating that officers always stop people like him, and told them to stop people in their own neighborhood. § 87(2)(b) kept walking. PO Bobe thought that the first question they asked him was what he had in his pocket. He answered, "Go fuck yourself. Go stop people in your own neighborhood." He continued to walk.

The three officers then stepped in front of him to physically impede his movement. PO Bobe knew that he did not physically put his hands on him in order to make him stop, but he did not know if any other officer used physical tactics to make him stop. He did not think that any officer ever stepped on his foot in order to get him to stop.

As soon as they stopped him, the officers asked him if he had identification on him, and he stated, "Why do you want my identification?" PO Bobe knew that they asked him for identification first before his pocket was searched.

The officers did not attempt to look on the ground with a flashlight to see if he dropped anything because they observed his movements the entire time that he was crossing the street in front of them, so they knew that he had not dropped anything. His hands were either inside his jacket pockets while they were talking with him, or he might have been holding a bag; either way, his hands were in view the entire time, and PO Bobe was not worried about his movements.

They figured out that he had a comb in his pocket by removing it. PO Bobe stated that one of the other officers pulled the object out of his pocket, although he did not know which officer did it. His pocket was not frisked before it was searched because the clip was exposed. PO Bobe could not recall if he could see the outline of anything inside his pocket. When asked about whether he was compliant when an officer reached into his pocket, and whether he was standing still at that time, he stated that he was never perfectly still and was "motioning with his arms" the whole time, although it was not necessary to restrain him in any way physically in order to remove the comb from his pocket because the officer pulled out the comb very quickly. There were no objects that fell out of his pockets while they were searching for the comb. He did not recall officers searching into any of his other pockets.

After that the officers apologized and explained to him that they thought that he had a knife. He continued to be angry with them, and told them they would not have done that in a white neighborhood. After the officers realized that it was a comb, the individual voluntarily gave his identification to the officers. PO Bobe did not remember any officer having to take his identification out of his pockets. PO Bobe first stated that he did not remember which officer specifically asked for and obtained his identification. When asked why they needed his identification after they realized that it was a comb, PO Bobe stated that PO Bobe himself explained to § 87(2)(b) that the officers wanted his identification in order to file a UF-250 to show that he was stopped.

When asked how the officers responded to § 87(2)(b)'s use of profanity, PO Bobe stated that it was an everyday occurrence and he did not respond in any way to his use of profanity. PO Bobe did not recall the other officers responding to him in any way.

#### **PO John Cascone**

*On January 4, 2008, PO John Cascone was interviewed at the CCRB (Encl 11C-D). PO Cascone is a § 87(2)(b)-old white male officer, about 6'2" tall and 240 lbs with hazel eyes. At the time of the incident, he had been on the force for 7 ½ years.*

PO Cascone worked from 6:00 PM on September 18, 2007 until 2:00 AM on September 19, 2007. He was assigned to anti-crime patrol in an unmarked dark blue Impala with PO Bobe and PO Ettienne. He was sitting in the backseat, PO Ettienne was driving, and PO Bobe was the passenger. He had no relevant memo book entries regarding this incident (Encl. 11A-B).

They observed § 87(2)(b) crossing the street near an intersection. Their vehicle was stopped at the time, and § 87(2)(b) walked about a foot in front of it. His front pocket was a little heavy, and looked like it had a knife in it. PO Cascone observed this himself, and all of the officers stated, "his front pocket." PO Cascone could see him clearly because he was sitting in the middle of the backseat, and § 87(2)(b) passed about one foot in front of the vehicle. The clip, which was exposed on the outside of his clothing, looked like the clip similar to those he had seen on a gravity knife. It was about four to five inches long and in his left pants pocket. All of the officers made the observation simultaneously, and made the decision to stop § 87(2)(b) together. He was wearing a short jacket with pockets on top that did not cover his pants. He did not see an outline of anything specific in his pocket.

The officers followed along him on the sidewalk for about one minute. The officers pulled along side of him, and PO Bobe showed his badge identifying himself as a police officer because he was in the passenger seat, and § 87(2)(b) was now on the right side of them. The officers asked him to stop, and he paused to curse at the officers and continued to walk. He was saying things like, "Fuck you," "Fuck your mother" and "Why don't you do this in your own neighborhood." Since he refused to stop, the officers all got outside of the vehicle. After getting out of the vehicle they asked him to stop again so that they could speak with him, and he continued to walk and continued cursing at them.

At that time, PO Ettienne stepped in front of him and put his hands on his shoulders to stop walking. He did not think that PO Ettienne stepped on § 87(2)(b)'s foot in an attempt to get him to stop. The officers surrounded him, PO Cascone was in back of him, and after that, he stopped. At that point, the officers asked him questions to figure what was in his pockets, and he did not respond and continued to curse at the officers. At that point, he thought that PO Ettienne pulled out the item because he was the one who had stopped him initially. PO Ettienne pulled out the comb and it was about six to seven inches long, attached to a ring and a clip. No officer ever frisked his pocket before it was removed. He continued to curse at them, saying, "Why don't you stop the people in your own neighborhoods like this." At that time, § 87(2)(b) was facing the officers, and he was standing with his back about half a foot from the wall (he could not remember exactly whether there was a fence or wall there).

The officers tried to explain to him that they thought it looked like he had a knife. He did not remember who asked for identification, but after it was discovered that he had a comb in his pocket, the officers asked him for identification. They had to ask him numerous times because he was at first not compliant with the request and continued to curse at the officers. He could not remember how they obtained his identification, if he handed it over or it was taken from him, but PO Cascone stated, "If he's that non-compliant, it would have had to be removed from his person." PO Cascone did not know which officer obtained his identification. The purpose of taking his identification was in order to run him for warrants and to file a UF-250 for him. When asked why it was still necessary to run him for warrants after it was discovered that he had a comb and not a knife in his pocket, he stated because he was being non compliant and cursing at the officers. He thought a UF-250 was prepared, but he did not prepare one himself. PO Cascone did not know specifically who ran him for warrants. When asked if any one ever requested his identification before they realized that it was a comb, PO Cascone stated, "[The officers] didn't want to go into § 87(2)(b)'s pockets in case it wasn't [a comb]."

The interaction lasted between five and ten minutes. He did not think any officers were looking for anything to see what he had thrown on the ground because the officers never lost visual contact with him the whole time. § 87(2)(b) was loud throughout the conversation.

As they were driving off, they could still hear him cursing at them. He never approached the vehicle as they were driving off, and he was never very close to the vehicle as they were driving off.

#### **Sgt. Michael Kraft**

*On December 11, 2007, Sgt. Kraft was interviewed at the CCRB in connection with this case (Encl. 12C-D) Although he did not provide his pedigree information, Sgt. Kraft appeared to be a white male officer, approximately 6' tall, with black hair and brown eyes. Sgt. Kraft did not have any relevant memo book entries concerning this incident (Encl. 12A-B).*

Sgt. Kraft worked from 11:05 PM on September 18, 2007, until 8:02 AM on September 19, 2007, and was assigned as the desk officer for his entire tour. He was dressed in uniform. Sgt. Kraft had no



recollection of an individual entering the precinct around the time of incident requesting to file a complaint against an officer. He did not recognize a photograph of § 87(2)(b). He stated that if someone asks to file a complaint against an officer, that person would be given the options, including filling out the form or calling the CCRB. He would hand them the sheet to fill out and they could wait while it was typed up, or mail it in themselves. They would also be given the appropriate phone numbers if they preferred to call in the complaint. It would never be procedure to ask an individual to wait for the subject officer to return to the precinct to file a complaint.

#### ***Additional police documents***

As already mentioned in PO Ettienne's statement, PO Ettienne filed a **UF-250** in relation to this incident (Encl. 8A-B). The UF-250 noted that at 12:01 AM on September 19, 2007, § 87(2)(b) was stopped at the intersection of East 32<sup>nd</sup> Street and Clarendon Avenue, and was suspected for criminal possession of a weapon. The circumstances leading to the stop were noted as suspicious bulge, which was explained as a brush and comb in his rear pocket, and furtive movements. Additional circumstances listed were that the area has high incident of reported crime, the time and day of the week corresponded to reports of criminal activity, and changing directions at sight of the officer. The UF-250 also indicated that physical force was used, including hands on suspect to push him against a wall/ car. The worksheet also indicated that § 87(2)(b) was frisked for furtive movements, refusal to comply with officer's directions, and a suspicious bulge, again referencing the brush and comb. Under demeanor of person stopped, PO Ettienne wrote that § 87(2)(b) was combative and uncooperative, and that he stated, "You can't frisk me."

The relevant **roll calls** confirmed these officers' tours as already noted (Encl. 14B, and 14E), and **warrant checks** were returned from **M.I.S.D.** documenting the use of Lt. Andre Allen's tax identification and password to run § 87(2)(b) for warrants at the date and time of the incident (Encl. 13A-B). Lt. Allen was not working during the tour in question, and was noted in the exceptions list of the **79<sup>th</sup> Precinct roll call** for Tour 3 on September 18, 2007 (Encl. 14A). The 67<sup>th</sup> Precinct **Command Log** from Tour 1 on September 19, 2007, had notations from Sgt. Kraft, including of one CCRB complaint between 12:50 AM and 1:10 AM, however, the narrative did not match the complaint made by § 87(2)(b) (Encl. 14C-D).

#### ***Officer histories***

None of the subject officers of this complaint have any previous substantiated CCRB allegations (Encl. 2).

#### ***Complainant's CCRB and convictions histories***

§ 87(2)(b) has filed no previous CCRB complaints (Encl. 3), § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Conclusions and Recommendations**

#### ***Officer Identification and Allegations Not Pled***

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that PO Ettienne used offensive language towards him, profanely threatened him with the use of force, and used further force against him after the frisk and the search. § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

### ***Undisputed Facts***

It is undisputed that shortly after midnight on September 19, 2007, § 87(2)(b) was stopped by PO Ettienne and his partners in the vicinity of Clarendon Avenue and 32<sup>nd</sup> Street. The officers were in plainclothes in an unmarked vehicle. He was subsequently frisked, searched, and then run for warrants before being allowed to leave the scene.

### ***Disputed Facts***

§ 87(2)(g)

### ***Assessment of Evidence***

§ 87(2)(b) and PO Ettienne's statements largely corroborate one another and were detailed.

§ 87(2)(g)

§ 87(2)(g)

The complainant alleged that he was walking down the street with his hands in his pockets when he saw an unmarked vehicle drive by, make a U-Turn, drive up alongside him. The officers told him to "stop" before identifying themselves as police officers. § 87(2)(b) had objects, including a light colored wooden handled brush, in his pocket. § 87(2)(b) kept walking until an officer displayed a badge, which prompted § 87(2)(b) to stop, and the officers subsequently exited.

§ 87(2)(g)

PO Ettienne stated that he saw a black handle sticking two inches out of § 87(2)(b)'s pocket as he was walking about sixty feet away, and that his pocket was weighted down as if it might possibly have a gun. PO Ettienne made this observation and alerted the other officers to this. He then saw § 87(2)(b) cross the street towards the side of the street where the officers were driving. § 87(2)(b) then pulled down his sweatshirt, and walked close the wall. PO Bobe and PO Cascone said the only observation they made prior to asking § 87(2)(b) to stop was a silver clip that they thought could have been potentially attached to knife, and that all the officers simultaneously made this observation. § 87(2)(g)

After these initial observations, the officers all allege that they drove alongside § 87(2)(b) and asked him to stop numerous times before he complied, and then exited their vehicle. PO Bobe and PO Cascone stated that § 87(2)(b) stated, "go fuck yourself" as he continued to walk, however, this was not corroborated by PO Ettienne; § 87(2)(b) stated that the officers called out to him numerous times without identifying themselves as they drove alongside him. § 87(2)(b) claimed that he continued to walk until he saw PO Bobe's badge displayed in the window, at which point he stopped. § 87(2)(g)

The officers claimed that when they exited their vehicle, they impeded § 87(2)(b)'s movement. At this point, the statements made by PO Ettienne and § 87(2)(b) converge, and the investigation concluded the following. The officers exited their vehicle and immediately demanded § 87(2)(b)'s identification. § 87(2)(b) refused to provide identification, and the officers continued to demand it. § 87(2)(b) stated that PO Ettienne told him that the officers did not need a reason to ask him for identification, and PO Ettienne stated he told § 87(2)(b) he was required to produce identification upon request by an officer. According to PO Ettienne, the main crux of their conversation surrounded § 87(2)(b)'s identification, not the object in his back pocket. According to all parties involved, § 87(2)(b)

raised his voice towards the officers in indignation for being stopped, and he continued to question the officers about their actions throughout the duration of the stop.

After the initial conversation, § 87(2)(b) was frisked and searched. § 87(2)(b) alleged that PO Ettienne grabbed him by his shoulder and his leg and immediately pushed him up against the fence. PO Ettienne stated that he attempted to lift up § 87(2)(b)'s sweatshirt to look at his pocket. He stated that § 87(2)(b) brushed his hand away, and at that point, it was necessary to use force in order to frisk his pocket. The handwritten UF-250 filed by PO Ettienne noted that § 87(2)(b) stated, "You can't frisk me" but did not note any physical resistance to the officer (Encl. 8A-B). PO Bobe and PO Cascone stated that there was no force used to frisk § 87(2)(b) he was not searched, and PO Ettienne simply frisked the pocket with the suspicious bulge while PO Ettienne and § 87(2)(b) faced one another. They also did not corroborate that § 87(2)(b) brushed PO Ettienne's hand away, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Ettienne restrained § 87(2)(b) over the fence as he frisked and searched him. § 87(2)(b) alleged that PO Ettienne searched into all of his pants pockets, and threw the items on the ground; he could not remember if he was frisked prior to PO Ettienne sticking his hands into his pockets. PO Ettienne stated that he did a frisk of the pocket where he saw the two inch handle. Upon a frisk, he could not make out what the object was but knew it was hard and so pulled it out as per department procedure. It was a hairbrush and he dropped it on the ground. He continued to frisk § 87(2)(b)'s other pockets and his waistline to see if he had anything else. When asked why he continued to frisk § 87(2)(b) after he found that the suspicious object was a brush, he stated that it was because he had been non-compliant, displayed violent behavior, and because he wanted to make sure he did not have anything else on him to "warrant his attention." § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Ettienne released § 87(2)(b) from the fence, and held him at the scene until he could be run for warrants and until identifying information for a UF-250 could be obtained. Both PO Ettienne and PO Bobe stated that they personally asked § 87(2)(b) for identification following the search and frisk. § 87(2)(g)

§ 87(2)(b)

All of the officers stated that after the suspicious object was removed from his pocket, there were no additional factors to raise their suspicion of criminal activity, and that the reason for continuing to keep § 87(2)(b) at the scene through demands for identification was part of general stop and frisk procedure. PO Ettienne pointed to his "violent" behavior during the duration of the stop, highlighting that he was loudly questioning the officers, and brushed PO Ettienne's hand away when he attempted to frisk § 87(2)(b)'s pocket. The other officers also pointed to § 87(2)(b)'s non-compliance with their requests, and the fact that he was cursing at the officers.

After the officers handed back § 87(2)(b)'s identification, PO Ettienne alleged that § 87(2)(b) began to call him a "pussy" and a "faggot" and told him he was going to "fuck him up." PO Ettienne denied that any of the officers ever responded to these comments, however, he contradictorily stated that after § 87(2)(b) told him that he could "fuck any one of their girlfriends" PO Ettienne responded, "Maybe you would know." § 87(2)(b) alleged that PO Ettienne made these comments towards him, then stepped in front of his path again as he was exiting, stepping on his foot, and then pushed him in the back of the head before leaving. PO Ettienne denied these interactions, but stated that as § 87(2)(b) was leaving, he attempted to hand him back his brush that he had dropped on the floor, and, since § 87(2)(b) did not want to take it, the officer let it fall again. § 87(2)(g)

§ 87(2)(b)

PO Bobe and PO Cascone made no mention of any of these interactions.

§ 87(2)(b) stated that he went almost immediately to the 67<sup>th</sup> Precinct in order to file a complaint following the incident. He claimed that desk sergeant, Sgt. Kraft, told him he had to wait until the subject of the allegations got there to file his complaint. § 87(2)(b) waited for two hours, and then Sgt. Kraft gave him the number for the CCRB. Sgt. Kraft was interviewed and denied recollection of § 87(2)(b) or these events.

***Allegation A: PO Vaughan Ettienne stopped § 87(2)(b) in the vicinity of Clarendon Avenue and East 31<sup>st</sup> Street in Brooklyn.***

***Allegation B: PO Pedro Bobe stopped § 87(2)(b) in the vicinity of Clarendon Avenue and East 31<sup>st</sup> Street in Brooklyn.***

***Allegation C: PO John Cascone stopped § 87(2)(b) in the vicinity of Clarendon Avenue and East 31<sup>st</sup> Street in Brooklyn.***

According to the officer statements, they observed § 87(2)(b) while walking down the street, and noticed a suspicious bulge. PO Ettienne suspected he might have a gun, while PO Bobe and PO Cascone stated they saw a clip resembling a knife. The officers exited their vehicle after numerous attempts to stop § 87(2)(b) and, by all accounts, impeded his movement and immediately requested identification. The officers asked § 87(2)(b) numerous times for identification, and § 87(2)(b) refused, asking for a justification for the stop from the officers.

Barry Kamins argues in *New York Search and Seizure* that although the U.S. Supreme Court has adopted a “bright line test” regarding seizures, namely that “if there is no physical restraint, there is no seizure” (Encl. 1A), it is possible “a seizure could occur if the suspect yields to a show of authority by, for example, stopping pursuant to a police command” (Encl. 1B). § 87(2)(g)

According to the Memo Book Legal Issues Insert, a Level III Stop, Question, and Frisk requires officers to articulate, “A reasonable suspicion that a person is committing, has committed or is about to commit a felony or Penal Law misdemeanor” (Encl. 1DD). § 87(2)(g)

§ 87(2)(g) According to all statements, § 87(2)(b) was not free to leave after he was frisked and searched as PO Bobe and PO Ettienne continued to hold him on the scene to run him for warrants and obtain his information in order to file a “Stop, Question, and Frisk Report.” After § 87(2)(b) had been physically detained for the frisk and search, he was told that he must provide his identification. § 87(2)(g)

PO Ettienne stated that he continued to demand that § 87(2)(b) produce identification at least three times. § 87(2)(g)

§ 87(2)(b) repeatedly refused their request for identification, and the officers had no justification to demand his identification at this point. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) According to Patrol Guide Procedure 212-11, officers are instructed to “request identification”, however, in preparing a UF-250, “If person refuses to identify him/herself (and there is no reason to take summary action) check off ‘REFUSED’ in the appropriate space of the ‘STOP, QUESTION, AND FRISK REPORT WORKSHEET’” (Encl. 1C). § 87(2)(g)

Regarding the warrant check that was run, officers are also instructed by Patrol Guide Procedure 212-11 to “release suspect immediately after completing the investigation if probable cause to arrest does not exist.” § 87(2)(g)

In the Deputy Commissioner of Trials decision *NYPD V. Michael Walsh* (DC Case No. 75254/99), an administrative law judge found similarly. The judge argued that in the case of a street stop for marijuana use in which a suspect was found not to be smoking marijuana, contrary to what the officers had initially suspected, “as soon as the [respondent] determined that McGrath was not smoking marijuana he had no basis to continue the stop” (Encl. 1SS, See Encl. 1EE-WW for full decision). In the cited case, the officers and civilian became involved in a shouting match during the officers’ initial investigative approach. Similarly, in the cited case, a continued stop was executed through the subject officer walking the complainant back to his car for identification after there was no indication of any criminal activity (Encl. Encl. 1SS). § 87(2)(g)

§ 87(2)(g) The ruling of the Office of Administrative Trials and Hearings in *NYPD v Dowd and Rose* established the standard for finding misconduct in search and seizure cases as follows: “An improper search or seizure is punishable misconduct if the officer acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper” (Encl. 1W). § 87(2)(g)

§ 87(2)(g)

***Allegation D: PO Vaughan Ettienne frisked § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.***

***Allegation E: PO Vaughan Ettienne searched § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.***

The investigation determined that PO Ettienne frisked the pocket containing the brush, removed it and dropped it on the ground. He then continued to frisk § 87(2)(b)s waistline and the rest of his pockets. § 87(2)(g)

PO Ettienne initially claimed that he observed a bulge in § 87(2)(b)s pocket that was “heavy” in weight with a two inch black handle protruding from the pocket. He explained that he believed this bulge to be a weapon, and listed the other factors for why he stopped § 87(2)(b) as § 87(2)(b) crossed the street towards the officers when he observed them, suspiciously pulled down his sweatshirt as he walked, “hugged” the wall as he walked, and refused to stop after repeated requests where PO Ettienne

identified himself as a police officer. PO Ettienne also alleged that § 87(2)(b) refused to give him his identification once he had been stopped prior to the frisk, and brushed his hand away during the frisk. This testimony is largely uncorroborated by PO Bobe and PO Cascone. § 87(2)(g)

§ 87(2)(g). Regardless, it is undisputed that PO Ettienne's frisk of § 87(2)(b)'s pocket revealed that the bulge with the two inch handle was a brush.

§ 87(2)(g). According to Kamins, "[o]nce a frisk is conducted and any reasonable basis for the officer's fear for his safety has abated, the officer cannot continue to search a suspect" (Encl. 1E). § 87(2)(g)

§ 87(2)(g). PO Ettienne stated that once the brush was removed, there were no further indicators that alerted PO Ettienne that § 87(2)(b) should have continued to be a suspect of criminal activity. When asked why he conducted a full frisk of § 87(2)(b) PO Ettienne stated he was looking for anything that might warrant his attention, and he pointed to § 87(2)(b)'s unwillingness to stop, and his "violent" and "combative" nature. Among the actions described were that § 87(2)(b) refused to stop, and that § 87(2)(b) was engaged in angrily telling the officers they were harassing him while using profanity. PO Ettienne further claimed that § 87(2)(b) brushed PO Ettienne's hand away as he attempted to frisk him. § 87(2)(g)

Furthermore, PO Bobe articulated that he did not respond in any way to § 87(2)(b) because § 87(2)(b) was not saying anything out of the ordinary, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Kamins argues that, "if the officer cannot legitimately determine whether a hard object is a weapon, he may reach in to determine the nature of the object...[A] police officer must *reasonably suspect* that the object is a weapon" (Encl. 1G). § 87(2)(g)

***Allegation F: PO Vaughan Ettienne used force against § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.***

***Allegation G: PO Vaughan Ettienne threatened § 87(2)(b) with the use of force at Clarendon Avenue between 31st and 32nd Streets.***

***Allegation H: PO Vaughan Ettienne spoke rudely to § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.***

***Allegation I: PO Vaughan Ettienne made remarks based upon the perceived sexual orientation and gender of § 87(2)(b) at Clarendon Avenue between 31st and 32nd Streets.***

§ 87(2)(g)

***Allegation J: Sgt. Michael Kraft refused to process a civilian complaint for § 87(2)(b) at the 67<sup>th</sup> Precinct Stationhouse***

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: